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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,362	12/19/2001	Sheena M. Loosmore	1038-1190 MIS:jb	3637

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EXAMINER

GRASER, JENNIFER E

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/936,362

Applicant(s)

Loosmore et al.

Examiner

Jennifer Graser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-29 are subject to restriction and/or election requirement

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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**DETAILED ACTION**

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-14, 23-27 and 29, drawn to isolated polynucleotides, host cells and vectors comprising said polynucleotides and methods of using said polynucleotides to produce proteins. **NOTE:** Applicants must choose only one DNA to be searched, for example SEQ ID NO:23 and a the corresponding DNA which encodes the protein of SEQ ID NO:24 and their corresponding primers. This is not a species election, but is a restriction because each DNA sequence represents a completely different product.

Group II, claim(s) 16-22 (only as they pertain to Parts A-C of claim 16), drawn to immunogenic compositions comprising polynucleotides and methods of inducing protection against disease through the administration of said polynucleotides. **NOTE:** Applicants must choose only one immunogenic composition to be searched, for example SEQ ID NO:23 and a the corresponding DNA which encodes the protein of SEQ ID NO:24 and their corresponding primers. This is not a species election, but is a restriction because each DNA sequence represents a completely different product.

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Group III, claim(s)15, drawn to a polypeptide. **NOTE:** Applicants must choose only one protein to be searched. This is not a species election, but is a restriction because each amino acid sequence represents a completely different product.

Group IV, claim(s) 16-22 (only as they pertain to Part D of claim 16), drawn to immunogenic compositions comprising a polypeptide and methods of inducing protection against disease through the administration of said polypeptide. **NOTE:** Applicants must choose only one immunogenic composition to be searched. This is not a species election, but is a restriction because each amino acid sequence represents a completely different product.

2. The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Groups I-IV lack the same or corresponding special technical feature because they each contain different products. Group I's special technical feature, a polynucleotide, is biologically, chemically and structurally different than Group III's special technical feature which is a polypeptide. Group II contains methods of protection with an immunogenic composition that is different from Group I since it contains a pharmaceutically acceptable carrier. Further, Group I's polynucleotides may be used for purposes other than as immunogens, i.e, they may be used in hybridization assays. Group IV comprises methods of protection using an immunogenic composition comprising a polypeptide and a pharmaceutically acceptable carrier. The

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polypeptide of Group III may be used for purposes other than as immunogens, i.e, they may be used in detection assays. Accordingly, Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features.

3. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15,1989). The Group 1645 Fax number is (703) 308-4242 which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Graser whose telephone number is (703) 308-1742. The examiner can normally be reached on Monday-Friday from 7:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*J. Graser*  
JENNIFER E. GRASER  
PRIMARY EXAMINER  
3/21/03